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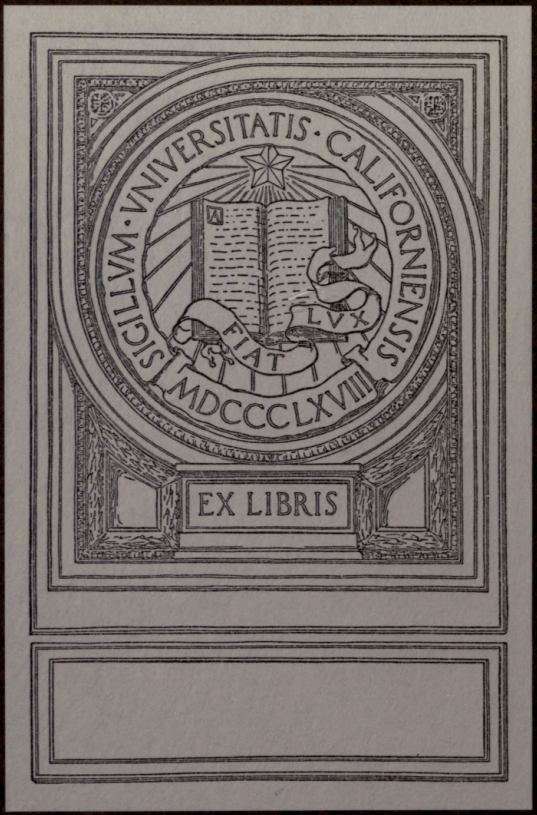
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TWENTY-FIVE YEARS OF REGULATED MONOPOLY

Another Chapter in the Haverhill Gas Case

CLOSING ARGUMENT OF G. W. ANDERSON

on the petition of the Mayor and City Council of Haverhill, for a reduction in the price of Gas before the Board of Gas and Electric Light Commissioners, December 14, 1911

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CLOSING ARGUMENT OF G. W. ANDERSON

MR. CHAIRMAN AND GENTLEMEN OF THE COMMISSION:—

After hearings extending over about eight months, the taking of nearly 1600 pages of evidence, besides numerous elaborate tabulations, computations and charts,—the time has come briefly to review some salient parts of this evidence and to submit our views as to what is a fair and reasonable price to be charged by the Haverhill Gas Light Company to its consumers.

I.

THE PRESENT SITUATION.

Twelve years ago yesterday I argued for the Mayor of Haverhill a like petition seeking a reduction in the price of gas. It is interesting to compare the situation then and the situation now. At that time the company was furnishing at $1.00 per thousand, net, gas of an average candle power of 24.3, costing the consumers obviously a little over 4 cents per candle power. As a result of the evidence adduced on that petition the Commission ordered a reduction to 80 cents net. The Company refused to obey the order, and brought a bill in equity in the Federal Court setting up the usual allegations of confiscation contrary to the Fourteenth Amendment. To the disgrace of the Commonwealth of Massachusetts, the case was never brought to trial. The consumers were left until July 1, 1909 to pay the full price of $1.00. The regulated-price-by-commission order has accomplished nothing for the citizens of Haverhill during these 12 years.

At the present time the price of the Company to consumers is 85 cents. But the candle power has been dropped so that it is, as nearly as one can make out from the loose and unsatisfactory records of the company, probably between 17 and 18 only,—or nearly, if not quite, 5 cents per candle power,—an increase in cost of at least 15% to 20%; that is, *light* is costing the consumers of Haverhill about 15% more today than it was 12 years ago today.

As to heat, the evidence is not so clear. We do know that the oil enricher used in the water gas (there being no coal gas now

made in Haverhill) has been dropped to 3½ gallons per thousand. All the experts agree that heat units diminish as oil enricher is diminished. It is therefore almost, if not quite, certain that the heat furnished by the Gas Company for gas stoves and other heaters is costing more today than it did 12 years ago today. But this is not all: When the present management took control they weighted the holder, increasing the pressure,—claiming that this was necessary in order to furnish an adequate supply in Bradford and some other remote districts. If there was such necessity, it grew out of the painful inadequacy of the distribution system, due in considerable part to the fact that the company has an extraordinary amount of three and four inch mains where mains two or three times that size are necessary. Certain it is that in many parts of the city the increased pressure has resulted in bad service,—that the gas "blows," that meters revolve more rapidly, that the customer gets less light and larger bills.

To summarize:—The cost of gas,—meaning by "gas" heat and light properly available for the customers' use, is much higher in Haverhill today than it was 12 years ago today, probably about 20% higher.

It is also certain that the new Stone & Webster management that took control about two years ago, has increased the cost of gas, although they have dropped the apparent price from $1 to 85 cents; for they have decreased the candle-power and the heat units, and increased the pressure.

How has the Company fared during the 12 years since the previous case was argued and this Board made its futile and unenforced order? The capital stock of this company is $75,000. This is all that the stockholders have in any form paid, directly or indirectly, to the establishment and maintenance of this public utility. The Company passed out of the hands of people whose primary purpose was that of making and distributing gas at a fair profit, into the hands of persons who have held and used their control mainly for speculative purposes,—security-making purposes,—in 1898 or 1899. During the period between the year ending June 30, 1898, and the year ending June 30, 1910, the Company has paid an average dividend of over 34%,—something over $25,000 per year. In this sum, of course, is included the payments made and put upon the books as loans to the Haverhill Gas Securities Company. But my opponents

agree, as indeed they must, that these payments are to be treated as though declared and paid as dividends.

The immediate occasion of the petition which I had the honor to present for this community a dozen years ago, was the fact that the speculators who had just before that time purchased the stock of the Haverhill Gas Light Company had put out, through the device of the Haverhill Gas Securities Company, $500,000 of bonds and had also issued $500,000 of stock,—thus endeavoring to transmute a $75,000 gas company into a $1,000,000 gas securities company, and to sell stocks and bonds to the investing public, the sole basis of value in which was the expectation of being able to extort in prices from the Haverhill consumers (through the medium of this legalized monopoly supposedly under the control of a regulating Commission) sums adequate to pay—not only the $25,000 per year upon the $500,000 of 5% bonds, but also a dividend upon $500,000 of stock. This Commission was then, I may say, appalled to discover and to see in concrete form some of the results of 15 years of supposed "regulation" of lighting companies in this Commonwealth. Nevertheless, the Board has, during these 12 years, utterly failed to extend the slightest relief to this community. The speculative scheme succeeded: This gas-using community has been taxed to pay the interest on $500,000; even the stock is said to have brought a substantial price; so strong is the feeling in financial circles that "regulation" will continue ineffective.

The present occasion of my being invited to re-present the cause of this community to this Board, is the fact that some two years ago Stone & Webster purchased all the stock and bonds of the Haverhill Gas Securities Company, and with the assistance of ingenious counsel thereupon devised a scheme to transmute this $75,000 gas company into a $900,000 gas company; the essential difference between the new scheme as contrasted with the old being that the present gas company was to sell out all its plant and assets, and in legal effect its franchise, to a new gas company, the new gas company petitioning the Board for authority to issue $900,000 of stock,—the alleged reproduction cost and value of the assets thus proposed to be purchased,—on which $900,000 they made the modest claim of the right to earn a dividend of at least 6%. This obviously would have subjected the consumers of Haverhill to an annual capital charge of at least $54,000 a year,—amounting, with a population of about

44,000 or 45,000, to a tax of about $1.20 per capita to be levied upon this gas-using community. Put in another way, the new proposition was that hereafter nearly 75% per annum should be paid upon the only assets contributed by the stockholders, to wit the original capital stock of $75,000.

Naturally, when this last scheme became publicly known, the community revolted; a mass meeting was held and resolutions passed calling upon the City Council to take legal action to thwart this scheme of permanent extortion. The Commission has already ruled in the proceeding asking for the approval of an issue of $900,000 of stock by the new Company, that the scheme is illegal; and this petition for a reduction in price is now before you for determination.

Poor gas at a high price, with enormous dividends to speculators in gas securities, are not the only evils from which this community is suffering as a result of private management under legalized monopoly. We find here, as we have at times found almost throughout the Commonwealth, and of which we had long and sad experience in Boston, a public utility company in local politics. We find it in apparent control of part of the local press. Throughout this controversy it has been obvious that the press is dominated by the same interests that dominate this speculative gas scheme. In the local daily paper nothing has been published showing the real situation to the citizens of Haverhill. The news published has been misstatement and distortion. It becomes necessary, in order to let the people of Haverhill know what their city government is really trying to do for them, to have the substance of this argument printed and distributed in pamphlet form to the citizens of Haverhill.

How long will this or any other self-respecting New England community endure such private ownership and management of a public utility, unless commission control can be made more effective?

II.

THE COMPANY'S BELATED PLEA IN BAR.

Before beginning his argument yesterday, Mr. Tyler for the Gas Company filed a motion to dismiss this petition, arguing that the Mayor and City Council are estopped to maintain it. All the facts upon which he rests his motion for an estoppel

were known to him and were before the Board at the beginning of the hearings on this petition. It is therefore clear that, even if those facts constituted an estoppel, the Company waived its right by going to trial for eight months at large expense to the city, without any suggestion of an estoppel.

But I welcome the opportunity afforded by his bringing into this rate case some of the historical facts relative to the earlier petition by the new Haverhill Gas Company for permission to issue $900,000 of stock, to deal briefly with the charge made by Mr. Tyler that there has been lack of good faith on the part of this municipality, or of the Mayor, or of any members of the City Council, in any of their dealings with the men who have bought up the stocks and bonds of the Haverhill Gas Securities Company.

In substance, Mr. Tyler's claim is that both the City and the Mayor of Haverhill are estopped to claim a price lower than 85 cents by reason of certain negotiations had with relation to a settlement of the old controversy. The situation in 1909 was, in brief, that the consumers had been since 1900 paying $1.00 for gas, with a right to recover from the Company 20% thereof unless the Federal Court held this 80-cent order confiscation. This claim amounted to something like $300,000 to $400,000,—in my opinion a perfectly valid debt. The City had started to take the plant,—municipal ownership was imminent. The plan of Stone & Webster was to settle this claim of $300,000 to $400,000, by rebating 10 cents per thousand from July 1, 1909,—amounting to about $21,000, then to have the old Company sell out to a new Company, which was to be capitalized at the alleged full value of the assets taken over; the price of gas was also to be reduced on July 1, 1911, to 85 cents; the City was also to get certain additional benefits by way of an agreed amount for taxes and in a lower price for municipal light.

Obviously, no city government has the slightest authority to contract with any gas company as to the price that shall be charged by that gas company to its customers. All that the Mayor or City Government may do is to institute proceedings for a lower price,—as may 25 or more customers.

But, entirely apart from any inability to contract, *neither the City nor any official thereof ever undertook to make any contract.* Nor was there any act or failure to act on the part of the Mayor or any city official savoring, to the slightest degree,

of bad faith. Indeed, the men now in control of this situation are the last in the world who can afford to raise in this case the question of "good faith and fair dealings." Every possibility of arrangement with the City and the consumers that was even suggested by the Mayor and by members of the City Council was strictly conditioned upon two things:

(a) That the new Company should "capitalize at an amount *not exceeding* its full value at the time of acquisition, all such property as it has and from time to time shall have acquired,"—referring to the property proposed to be taken over from the old company by the new company and used for gas purposes; and

(b) That the issue of stocks and other securities by the new company should be approved by this Board as legal.

(See "Franchise," p. 6.)

In fact, when the proposition was presented to this Board of allowing a gas company to sell out its works and franchises to another gas company established and controlled by the same persons,—to die that it might live again,—an arrangement by which $75,000 of stock was to be transmuted into twelve times that sum, $900,000,—the Board held the whole proceeding illegal.

But if we concede that counsel for Stone & Webster may have erred in believing that he had successfully devised a legal scheme for watering the stocks of Massachusetts lighting companies,—a problem which has hitherto defied the ingenuity of all the other numerous able counsel who have for many years sought to accomplish the same result,—and that this error of law involved no breach of good faith on the part of the new owners, what shall we say as to their breach of their undertaking to capitalize at "*not exceeding* the full and fair value" of the property taken over, in the light of their attempt to get a capitalization of $900,000 on property not worth for gas-making purposes substantially more than one-third that sum? Is this "good faith" to this community?

Nor is this all: The circumstances under which this Board was induced in August, 1910, to consent to the entry of a final decree in the Federal Court enjoining this Board and the Attorney General of the Commonwealth from enforcing the perfectly valid order of this Board for 80-cent gas, made in 1900, are most extraordinary and, I must say, suspicious. The Board was in some way—the circumstances are not fully disclosed—

induced by representatives of this Company to assent to that decree on the understanding on the part of the Board that an arrangement had been made satisfactory to this community. (See decision, April 6, 1911, Stock case, and quotation in Mr. Tyler's argument, p. 1573.) The Board therefore failed to give any public notice to the consumers affected by their act, of their purpose to enter a decree the purpose (and possible effect) of which was to nullify the 80-cent order in which the gas-consumers of Haverhill had vested rights. It is most extraordinary, if it be law, that the Gas Commission cannot make an order for a *reduction* of the price of gas without notice and a public hearing; and may legally make an order, or,—what is the same thing,—assent to the entry of a decree restoring the price from 80 cents to $1.00,—without notice to the consumers who have paid $1.00 and are legally entitled to 80-cent gas,—either as to their past or as to their future rights. I venture to say that the act of this Commission in assenting to that decree was illegal.

The intended effect of the assent by this Board to the entry of the decree in the Federal Court was precisely the same as the effect of a revising order made under Revised Laws, Ch. 121, sec. 35. That section provides that this Board may, on the petition of a company, "*after notice,* give a public hearing to the petitioner, *to the city or town and to all other persons interested, and thereafter* may pass such orders relative to the price and quality of the gas or electricity thereafter to be furnished by such company as it determines are just and reasonable." What this Board cannot do directly, I submit it cannot do indirectly. I am convinced that the act of the Board in voting to assent to the entry of that decree in August, 1910, was ultra vires and void. I believe that this Company still owes the gas consumers of Haverhill the aggregate of their payments in excess of 80 cents. What practical results may follow from these propositions of law, I do not now stop to discuss. I may, however, add, that even if the Company has succeeded in getting releases from the consumers to whom it made the payments out of the $21,000 fund, I have no doubt that, on a proper showing of the facts, any court would hold those releases vitiated by fraud.

It is interesting to note that if the 80-cent order had been enforced, the company would still have made an income adequate for a generous return; and also that the 20% excess payment amounts to about double the figures which the Company's

representatives used in the discussions at the time of the hearing. See Table, p. 79-a, from which it appears that in the 11 years, 1900 to 1910, the Company's sales of gas amounted to 1,770,113 thousands. The total income on manufacturing account was in the same period, $1,820,444. As substantially all these sales were at $1.00 a thousand, 20% in excess of the rate fixed, it is obvious that the debt due the consumers was upwards of $350,000.

Having said so much, I will also say that I have not the slightest doubt that the Commission acted in good faith and without the slightest suspicion that it was being made a party to what was in effect a fraud upon this community.

Equally extraordinary was the ability of the representatives of the Company to conceal from the gas-consumers of this community the fact that it had even been suggested to this Board that such final decree should be entered, until after it was entered. Mr. Essex Abbott, representing a large number of consumers, had, in June, 1910, appeared before the City Council and filed a brief setting up claims of illegality as to the scheme of reorganization, substantially the same as those afterwards sustained by this Board. The decree had been entered several months before he ever heard of it. It was not until I became of counsel for the City, in the winter of 1911, that Mr. Abbott, or, so far as I know, any gas consumer of Haverhill, knew that the new owners had, while the legality of the general scheme promulgated by them was still in question,—before they had done anything to carry out even their own promissory representations as to improved service,—succeeded in putting the barrier of a Federal Court decree between this Company and its creditors to the amount of $300,000 to $400,000. Both the Board and a majority of the Municipal Council were tricked.

The gist of the dealings of this new management with this gas-using community is that they formed an illegal scheme for speculative stock-watering; and by practices which, to use the mildest possible term, may be called sharp practices,—to settle with their customer-creditors for about 5 cents on the dollar; to stop municipal ownership,—the chief fear of this sort of exploiting manipulators; and then to proceed, in gross breach of their own promises, to undertake to capitalize at about three times the "full and fair value," the assets, which had already been, in the larger part, paid for by these gas consumers out of earn-

ings far in excess of any reasonable dividends and accumulated as a trust fund for the benefit of both company and customer.

The gas consumers of Haverhill are *not* "estopped," by reason of having already endured so many wrongs, from now claiming that hereafter this public utility shall deal with them honestly and fairly. Indeed, this claim of estoppel simply indicates the curious obsession which seems frequently to destroy all sense of justice and fairness in the minds of many of the men who get the control and mangement of public-service utilities. They come to regard every hard-working, thrifty and prosperous community, like Haverhill, as a prey. That amiable and attractive gentleman, Mr. Robb, gave unconscious testimony to what is really the guiding principles of his firm, Stone & Webster. Disclaiming that he is a "gas expert" (and therefore in the class of Messrs. Jackson and Chase), Mr. Robb says, in effect, (p. 1233 et seq.), that the value of a gas property for buying purposes may be reached by reckoning $3.00 to $4.00 per thousand on out-put, which makes obviously the value of the Haverhill Gas Company, in decent condition with an out-put of 250,000,000 a year, from $750,000 to $1,000,000. This amounts to saying that his concern really buys gas companies, not on the engineering basis—what it costs to build a plant and to make gas in it when built—but on the basis of the "charge that the traffic will bear"; that it is the franchises, the right to tax, that is the main consideration.

When such a community refuses to submit, they set up claims of "unfair dealing" and invoke the Fourteenth Amendment to assist in getting what does not belong to them.

This stock-watering scheme of the new owners is infinitely worse, in every respect, than the old Haverhill Gas Securities scheme; and it has been promoted by methods and defended by pharisaical cant that, by contrast, make one almost respect the Securities scheme. Haverhill may expect nothing good from such ownership and management as this.

III.

THE REAL ISSUE: A FAIR PRICE FOR GAS.

The foregoing is preliminary and historically interesting; but the gist of this case is, What is a fair price for gas now to be

charged by this gas company? This problem naturally and easily sub-divides into two parts:

(1) The cost of gas at the burner.
(2) The capital charge.

---

(1) The cost of gas at the burner:

The improved form of this Commission's reports makes it much easier than a few years ago to determine with approximate accuracy what it ought to cost in any gas company to put gas to the burner. In this case we cannot be guided by the figures of the reported cost in Haverhill during recent years. Apart from the fact that the book-keeping of this Company, under its speculative management of recent years, is entitled to little or no credence as to many important items, the fact that the Stone & Webster management have junked the old manufacturing plant and put in a new water-gas plant, is a conclusive admission on their part that the old costs are no guide in determining the fair cost for the future. The new management claims to have the highest kind of engineering talent. The Stone & Webster Engineering Corporation is charging large sums to this Gas Company which they potentially own, for advising it and for consulting with themselves about the management, for themselves, of this property. Even if we discount from their claims, we are fully justified in assuming that the rehabilitated plant is to be dealt with as an efficient, fairly economical and properly managed plant. If it fails of efficiency or proper management, it should make no difference to the consumers; the owners must pay the penalty of either inefficiency or improper mismanagement.

Repeatedly, before and during the hearing, I sought to obtain the estimates of these expert engineers as to what it would cost to put gas to the burner, when they had completed their rehabilitation of the plant, as they did during the early summer of 1911. Their neglect and refusal to give that estimate argues against the good faith and frankness of which their counsel makes so much protestation.

The best evidence as to the fair cost in Haverhill is found in the expert testimony of Mr. Alton D. Adams and in a comparison of reported costs in other Massachusetts companies. Mr. Adams estimates that gas at the burner will cost this company a little less than 55 cents. This computation is carefully made

and, indeed, in many items, such as Purifying & Water, Cost of Meter Takers, Public Gas Lamps, Incidentals, Insurance & Taxes, is based upon the actual results in the old plant, and also reckoned an output of only 203,000,000 feet when the actual output for the first year which would be affected by any order that you will make will be about 250,000,000 feet. Moreover, his estimate of taxes should be reduced. This item of 5.39 cents per thousand is based upon the assumption that all the property upon which taxes are levied is used for gas purposes, whereas in fact they have some $40,000 of investment in real estate not used at all for gas purposes. He figures for repairs and renewals or depreciation 11 cents per thousand feet, which is, for a company of this kind and in such a condition as the other side claim this plant to be, too large, even if we do not assume that there is any depreciation fund applicable to current depreciation charges,—a topic which I shall touch upon later. On these and other grounds, which I cannot now go into in detail, his estimate of 55 cents cost at the burner is too high. This also appears by comparing the actual, reported, results in some of the other larger companies of Massachusetts, shown in the following table:

TABLE BASED ON RETURNS FOR YEAR ENDING JUNE 30, 1910.

Names of Cities	Sales of Gas	Cost at Burner	Sales per mile of main—thousands
Boston	5,023,906,546	.48486	5568
Cambridge	670,000,000	.59325	4375
Charlestown	238,229,775	.66894	4079
East Boston	242,000,000	.67774	3590
Fall River	498,000,000	.54502	4230
Lawrence	418,000,000	.65244	2717
Haverhill	203,000,000	.74829	3247
Lowell	574,000,000	.57959	3430
Lynn	606,000,000	.47377	4286
Pittsfield	112,000,000	.75948	2075
Malden	420,000,000	.56008	2478
New Bedford	360,400,000	.62833	3698
Springfield	568,000,000	.58058	3187
Taunton	107,000,000	.71301	1721
Worcester	638,000,000	.53240	3940

It is matter of common knowledge that most, perhaps all, of the gas companies of Massachusetts, unless it be the Boston

Company, are still charging up more to operating expenses than is necessary to cover repairs and depreciation; that the figures in this table are, therefore, higher, and not lower, than the actual cost. But without any such allowance, it is obvious that the cost of gas at the burner in Haverhill is fairly comparable with the cost in Lowell, Lynn, Malden, Springfield and Worcester. Is is true that the output in all of these cities is somewhat larger than in Haverhill; but when a company is as large as the Haverhill Company, selling about 250,000,000 feet a year, its manufacturing efficiency approximates to the maximum; mere increase in size grounds few additional economies. Lynn and Fall River have also some advantages in freight charges on coal and other purchases. But Lynn's (about) 47 cents is lower than Haverhill's estimated 55 cents, after due allowance for water transportation and for larger output in Lynn. Fall River is the only other purely water-gas plant in Massachusetts.

The cost of distribution should be low in Haverhill; its sales per mile of main are high,—in thousands, 3247, compared with Lowell's 3430, Springfield's 3187, Worcester's 3940, Brockton's 1658, East Boston's 3590, and Taunton's 1721.

Remember also that the candle-power in Haverhill has been much reduced. This Commission cannot, as I understand it, compel the furnishing of gas above 16 candle power. If a company chooses to furnish a low grade of gas, approximating the legal minimum, as this Company has apparently chosen, the price must be made accordingly. You are not now dealing with a candle power of 24.3 as you were 12 years ago; you are dealing with a management whose motto seems to be, "Less light and more money."

We ask the Commission to find that the cost of gas at the burner, in this company properly managed and with no exorbitant salaries paid and charged up, or other such speculative schemes worked into the management as this Commission recently condemned in the North Adams case, will not exceed 55 cents.

The relations of this company to the Stone & Webster Engineering Corporation demand the most critical scrutiny. The engineering and other expenses are exorbitant; they remind one unpleasantly of some of the salaries paid by the old Boston Company under the Addicks regime.

(2) What is the basis of the capital charge?

The capital stock of the Haverhill Gas Light Company is but $75,000. For the ensuing year this would amount to about 35 cents per thousand sold,—the lowest capital per thousand of any company in the Commonwealth. Obviously a 10% (which is generous) dividend upon the capital stock amounts to 3½ cents per thousand feet as a capital charge. Haverhill is therefore entitled to a price considerably lower than any other city of the Commonwealth, unless the capital charge is to be reckoned upon some other basis than the capital stock of the company. Sixty cents per thousand feet is a high price for gas in Haverhill, reckoning large dividends upon the only contribution that stockholders have ever made to the establishment and maintenance of this public utility, and assuming for the moment that past extortions are in no way to be punished.

The claim on the other side is that, not the capital, but the alleged value of the property, without regard to whence that property came, is to be the basis of the capital charge. They make this claim on two grounds: The first is what I call the "Fourteenth Amendment Theory of Capitalization," with which I shall deal later. The other is the "Theory of Foregone Dividends."

(a) "Foregone Dividends."

More concretely, they claim that the old stockholders of the Haverhill Gas Light Company,—citizens of Haverhill long since dead and gone, did not get the dividends that they were entitled to out of this company; that therefore the present owners are entitled to compute and compound those foregone dividends, and take to themselves the benefit of that which was foregone by their deceased corporate ancestors. In substance, they allege that the thrifty and hard-headed Yankee shoemakers who in the early decades of the life of this Company owned it, were not sufficiently intelligent and selfish to take their just deserts, but sacrificed themselves to the Gas Company to such an extent that the present owners are entitled now to profit out of their sacrifices. They present an elaborate chart prepared by Mr. Harvey S. Chase, hung upon the wall, from which it appears that that ingenious gentleman has figured out that the capital stock plus profits which ought to have been taken out, and were not, was

on July 1, 1910, not $75,000, but $578,067. By the same ingenious method Mr. Chase has figured that on June 30, 1887, when the books of this Company, directed only by the inferior intelligence of hard-headed citizens of Haverhill, showed $91,878.07, it really ought to have had assets on its books of $255,857. It is true that in order to reach these interesting and amazing results, Mr. Chase has *guessed* two basic things: First,—he guesses what part of the charged operating expenses, from 1859 down, were really not operating expenses but construction charges, and changes the book-keeping according to his *guess*. Second,—he *guesses* that a proper depreciation charge from 1859 down was 6.6 cents per thousand feet of gas.

In passing, I note that this figure of 6.6 cents per thousand as applied to a small gas company in the crude days of the '60s and '70s is 20% less than the 8½ cents per thousand which the present management would charge present consumers as necessary to keep up this large rehabilitated company now selling about 250,000,000 feet a year. Indeed, Mr. Chase, on cross-examination, admitted that 6.6 per thousand feet was altogether too small in the earlier years of the corporation, and, again contradicting his employers, asserted that it was too large in the later years. As he takes this depreciation charge each year for the purpose of carrying forward and compounding the balance remaining as though it were an addition to capital, it is manifest that the smaller he makes it in the earlier years, the larger the hypothetical capital that he thus achieves. But Mr. Chase is not disturbed by the fact that the depreciation charge is wrong at both ends; but, with the imperturbable logic of the judge who said, on returning from the circuit, "There were some verdicts for the plaintiff that ought to have been for the defendant, and some for the defendant that ought to have been for the plaintiff, but on the whole justice was done,"—Mr. Chase insists that his depreciation charge is all right throughout the fifty odd years of the Company's life.

But I will not spend time in dealing with the logic of a man who makes two obverse wrongs equal one right. Mr. Robb's ingenious computations went upon the same basis.

The theories are ridiculous; the results figured have no relation to actual facts. The plain truth is that this corporation had, when it first began to make returns to this Commission, assets carried of a book value of $91,878.07 and doubtless worth

somewhat more than that sum. The following table shows some interesting facts relative to the life of this corporation:

Year	Capital stock	Total Book Assets	Assessed Value	Dividends paid Dollars
1887.....	75,000	91,878.07	122,500.00	7,500.00
1888.....	75,000	150,927.33	122,500.00	7,500.00
1889.....	75,000	167,752.24	122,500.00	7,500.00
1890.....	75,000	186,272.46	151,700.00	7,500.00
1891.....	75,000	215,896.98	164,000.00	7,500.00
1892.....	75,000	232,562.00	165,150.00	7,500.00
1893.....	75,000	248,598.81	165,150.00	7,500.00
1894.....	75,000	251,309.03	165,150.00	7,500.00
1895.....	75,000	273,605.27	165,150.00	7,500.00
1896.....	75,000	286,473.25	168,550.00	7,500.00
1897.....	75,000	297,377.73	169,800.00	9,750.00
1898.....	75,000	389,579.08	173,625.00	37,500.00
1899.....	75,000	401,101.26	168,050.00	22,500.00
1900.....	75,000	395,500.00	315,100.00	33,008.44
1901.....	75,000	411,862.52	320,775.00	27,000.00
1902.....	75,000	394,254.92	320,450.00	25,000.00
1903.....	75,000	392,956.45	320,050.00	25,000.00
1904.....	75,000	420,529.70	320,050.00	25,000.00
1905.....	75,000	434,069.20	320,050.00	25,890.42
1906.....	75,000	582,174.60	355,200.00	25,000.00
1907.....	75,000	605,237.10	374,600.00	25,000.00
1908.....	75,000	627,415.90	424,600.00	25,000.00
1909.....	75,000	663,756.67	438,200.00	12,500.00
1910.....	75,000	764,871.99	439,525.00	975.00*

*Note: In 1910, pending the success of the new stock watering scheme, the new management practically stopped dividends.

But it should be said with relation to this table, that without doubt during the earlier life of this corporation and until sometime in the '90s the policy of the corporation was to charge off *more* to operating expenses than the real cost, and therefore to carry their assets at *less* than their actual value; that the policy of the corporation since 1898 or 1899, when it went into the hands of speculators, has been to carry their assets as worth *more* than the actual value.

The question of the present relation of this corporation's capital stock to its assets is further confused by the recent large expenditures in building a new and enlarged manufacturing plant and extending the mains, and the utter failure of the Company to show what book-keeping entries they purpose making as to these expenditures. They say that they have expended some-

thing just under $250,000, or over $300,000,—one cannot make out from their evidence which, nor did Mr. Tyler appear to know when I asked him during his argument yesterday. How much of that they charge to current expenditure, how much they charge against the "depreciation reserve" item which has stood on the books for some time, how much if any of it is carried as a debt which, on any theory might form the basis of an application for a bond issue or for new stock,—we are left in doubt. But, in order to figure, for the purpose of the present point, some sum as representing the approximate surplus of the corporation, I take the figures of the valuation given by our expert, Mr. Alton D. Adams, as showing the real value of this property on June 30, 1911. Mr. Adams figures that the value of the property used and necessary to be used for gas purposes on that date, which includes the recent reconstruction made by Messrs. Stone & Webster, is $350,000. In addition to that, the corporation owns land on Essex Street and on Merrimac Street, said to be assessed for about $40,000, and has some quick assets not necessary to be used for gas purposes, aggregating in all $82,000, which, in figuring the surplus, must be added to the $350,000,—making $432,000, round figures, total assets. From this, in order to reach the surplus, I deduct the $75,000 capital stock, getting $357,000; and if there are debts properly incurred as a result of the reconstruction which might be capitalized, those debts also should be deducted; in any event, such debts must be small, and the surplus of this corporation must be at least $250,000 to $300,000. Is this surplus fund or such part of it as is reasonably necessary to be used in making gas, made up of "foregone dividends?" We say no.

Mr. Chase's chart shows that for the first 14 years of the business of this corporation the stockholders received an average of about 5½%; for the next five years a little over 8%; then the Directors put the stock upon a regular 10% basis, which was never varied from until the speculators got the property, except in the year 1882 when it was 5%, and the year 1897 when it was 12%. Beginning with 1898, as is obvious from the above table, the stockholders have been taking out of this property about 34% a year. If, therefore, we should cut loose from business practices and talk about "moral obligations," it is manifest—not that the consumers owe the stockholders anything for "foregone dividends," but rather that the recent stockholders owe the

present and future consumers for the extortions of these 13 years of 34% dividends. Down to 1896 the stockholders had received an excellent return on their money, including adequate pay for all the risk they ever ran. Only $50,000 was ever *risked* anyway; for the increase of the capital about 1873 from $50,000 to $75,000 was nothing but a new *investment;* that new money could doubtless have been obtained on a 5% or 6% basis.

Moreover, these stockholders took dividends that contented them—doubtless all that their consciences permitted them to charge their fellow citizens for the economic service they were rendering.

No part of the capital of this Gas Company consisted of "foregone dividends" for the simple reason that none have been "foregone." "You cannot turn the mill with the water that has past."

(b) The Fourteenth Amendment Capitalization Theory.

Passing the Foregone Dividend claim, we come to the broad, far-reaching proposition that the Fourteenth Amendment to the Constitution of the United States makes utterly immaterial all questions of the capital stock of this corporation, all contributions or investments,—initial or subsequent, by stockholders; that the only constitutional basis for rate-making is the reproduction cost of the property used in the public utility. The claim is that the whole public-corporation policy of this Commonwealth is immaterial so far as the basis of rate-making is concerned; that the Fourteenth Amendment to the Constitution of the United States, as construed by the Supreme Court of the United States, is the supreme law of the land, and over-rides Massachusetts statutes, Massachusetts Supreme Court decisions, and, of course, the decisions of this Commission.

It is time that the Commission dealt in no unmistakable terms with the attempt to capitalize the surpluses of lighting companies in this Commonwealth under the threat of this Fourteenth Amendment theory of capitalization. Only in degree is it less important in other cities and with other companies than in Haverhill.

I venture the confident assertion that the whole proposition is groundless, and that a fair analysis of the carefully guarded opinions of the Supreme Court of the United States will convince any sound-thinking lawyer that it is groundless. Not here undertaking to review many of those decisions in detail, I

direct this Commission's attention to the New York Gas case, Wilcox vs. Consolidated Gas Company, 212 U. S. 19,—and the way in which the Supreme Court of the United States there dealt with the claim that the value of the franchises of the Gas Company were property on which a return must be allowed in fixing a price for gas. The court below held that the franchises were property on which a return should be reckoned, and allowed $12,000,000 as their value. About $7,000,000 of this sum was for franchises which the State of New York had permitted to be capitalized at a previous consolidation in 1884 and on which securities had been issued to bona fide investors without notice of any claim that their securities were not well grounded upon substantial values. But the Supreme Court, in dealing with the claim that a return should be reckoned upon the full value of the franchises, while holding that franchises are property, rejected utterly that they are property on which, under the Constitution, a return is necessarily to be allowed. On the contrary, it held that, as the value of the franchises depended entirely upon the exercise of the legislative power to fix rates, in a rate-regulation case the franchises were not to be reckoned at all; but (and this is the important point for our present purpose) finding that the State had agreed in 1884, for the purpose of allowing stocks and bonds to be issued, upon a value of something over $7,000,000 for the franchises as they then were, they held that the State's action in that regard was binding upon all the parties. The result was that the franchises were excluded from the basis of computation except so far as the State's policy, acted upon by the parties, had made such franchises property; on that point the Supreme Court held all parties bound by the agreement which had been in good faith entered upon and executed by all parties.

No clearer declaration could be made by this great Court that in dealing with its anti-confiscatory power under the Fourteenth Amendment, it deals with corporate rights as they are shown to exist under the state law which has created the corporations and undertaken to regulate them. The Supreme Court has held in unmistakable language that regulation cannot be perverted into extortion.

Smyth vs. Ames, 169 U. S. is, on fair analysis, an authority for our contention, though frequently cited as laying down in dogmatic language the reproduction cost theory. The Court

says (inter alia) "What the company is entitled to ask is a fair return upon the *value of that which it employs* for the public convenience." But the Company "employs for the public," etc. only that which it *furnishes* for the public; and the whole import of this case is against any such fraud as permitting trust funds to be wrested from the uses for which they were accumulated. Smyth vs. Ames is really a decision against rates based on artificial values in stocks and bonds not representing real property.

No decision has been or can be cited in which the Massachusetts Supreme Judicial Court or the Supreme Court of the United States has held that rates must be based on property furnished by the customers and not by the stockholders.

Compare also the Knoxville Water case, 212 U. S. 1; the Cumberland Telephone case, 212 U. S. 414, and the cases therein cited.

In the light of these decisions, it would be useless to spend time in citing and differentiating the dicta from the numerous inferior courts, many of them dealing with cases where the property was taken, many of them with the construction of local statutes,—not one of them applicable to a Massachusetts corporation,—which is controlled only by Massachusetts law, unless that law be inconsistent with the fundamental law of the nation.

The Supreme Court of the United States only needs to have pointed out to it the historical incidents of the agreement between public and investor, and the public policy of this Commonwealth under which our gas companies have been created and maintained,—in order to reject utterly the theory that in Massachusetts the reproduction cost of the property, and not the investment of the stockholders, is to be the basis of rate-making.

For, note briefly some of the salient facts concerning our Massachusetts corporations. At the outset, our corporations must be distinguished from the corporations of almost every other state, for that all of them (down to 1903) were formed, on what is in effect an anti-stock-watering law, that is, the capital stock had to be paid in in cash or in property taken as the fair equivalent of cash. The stocks and bonds of Massachusetts corporations have, therefore, always in legal theory represented actual values. The capital stock of Massachusetts corporations has been held to be impaired whenever property of the corporation was in value less than the amount of the stock

and debts. Compare, for instance, the report on the West End case by the Railroad Commissioners 1898 Report, p. 140. See also the line of cases cited in the brief of opposing counsel in the Stock case, pp. 17 et seq., among which are Hemenway vs. Hemenway, 181 Mass., 406. The cases cited there show that any amount of surplus above the capital and debts of a corporation has never been deemed to be capital stock, but simply an accumulated profit, which, being distributed, went to the income-taker and not to the remainder-man. In other words, our Massachusetts corporation law has required that the stockholders should pay in, in cash or its equivalent the par value of the capital issued, and has always kept that capital and its representative carefully distinguished from any accumulations from any other source.

Quite other has been the theory in other states, where stocks and bonds have been issued practically without reference to the capital paid in. It is largely because of this lack of relation between capital paid in and capital stock, that the Courts have been compelled to go as far as they have toward the reproduction value theory.

Coming now to the claim that at some time or other a right accrued to the stockholders of Massachusetts gas companies to have something other than their investment considered the capital upon which rates are to be made, it is obvious that there may be a difference between the theory prior to 1885, when these corporations became legalized monopolies under the control of this regulating Commission, and the theory after 1885.

First,—as to the legal status of gas companies before 1885,—before they were made legalized monopolies: Before 1885, Massachusetts gas companies were nothing but manufacturing corporations, having revocable rights in the streets of our cities and towns, having no public duties and charged with no public trust. Compare Commonwealth vs. Lowell Gas Light Company, 12 Allen, 75,—a decision made in 1866. Their property was of the most precarious nature; at any time any city or town might revoke their rights in the streets, which would make their plant substantially valueless. Whenever their profits loomed large, there was danger that some competitor might come in; and, as they could not extend their field beyond the city or town, obviously competition would have the most destructive effect. The result was that conservative directors of prosperous gas

companies were, before 1885, building up all the surplus they could, having in mind the possible destruction of their property, not merely by electric light competition, explosion, obsolescence, and other kinds of depreciation, but, worst of all, the possibility of competition. To realize the situation, re-create in your minds the state of terror into which Mr. Addicks threw the holders of gas stocks in Metropolitan Boston when he came to Boston in 1884 and threatened competition by the Bay State Gas Company. It was not very unreasonable for Directors before that time to seek to put, as the old Boston Gas Company sought to put, a large sum of money into real estate and elsewhere, which, in case of destruction, by competition, of their property used for purely gas purposes, might enable them to liquidate to their stockholders substantially at par. In fact, although most of the companies were charging off to operating expenses large sums which for continuing gas making purposes might have been carried to surplus account, it is doubtful if the fair market value of the gas properties in this Commonwealth, under the existing legal conditions before 1885, was worth any more than the investments shown by the stocks and debts.

It is pertinent also to have in mind that the act of 1885, making these concerns legal monopolies, was not the direct result of a public demand for regulation by Commission, but was legislation enacted at the behest of the Gas Companies for the purpose of securing their property against the destructive results of competition. The corporation managers came to the Legislature and said, in effect, that their private interest in having their property protected against competition was coincident with the public interest in not having the streets dug up by competing companies; they therefore sought to have these corporations made, in their respective communities, legalized monopolies, agreeing on their part that if this monopoly power should be given to them, they would become public-service corporations, serve all without discrimination and charge fair rates only. The Legislature assented to this proposition.

But it cannot be too emphatically stated that the law which made these concerns legalized monopolies was a law enacted primarily to protect private property, and that the public regulation was the consideration of the grant to the private interest.

Did, or did not, these corporate managers at the time when they sought and obtained this grant of legalized monopoly and

agreed that thereafter only just and fair rates should be charged, agree by necessary implication that the basis of those fair rates should be the capitalization of Massachusetts corporations, or that some other and different basis should be adopted? Put in another way: Was the investment theory of capital, or the reproductive cost theory, agreed upon between the Commonwealth and the investors as the basis for rate-making when the legal status of these corporations was radically changed in 1885.

Bear in mind that the value of the property of these gas companies was, by the granting of the legalized monopoly, much increased; that the passage of the Act laid the financial foundation for putting back on the books assets which had been previously charged off,—the thing which Mr. Addicks did in Boston.

If there was the slightest legal or moral foundation for the claim that the new rate-making power was to be exercised on any other basis than that of the well-ascertained basis of the capital stock of Massachusetts corporations, good faith required that the corporation managers should then and there make that claim. There was not a corporation manager in the Commonwealth of Massachusetts who would have dreamed of having the supreme arrogance to suggest that the new rate regulation should be based upon anything more than the capital stock,—the investments paid into these gas companies. If you could conceive of the making of such suggestion, no legislator would have received it with anything but scorn and laughter.

Put in a word: In 1885 the gas companies of this Commonwealth passed out of the competitive field into the rate-regulating field, with an agreement between the corporations and the Commonwealth that rates should be based upon the established Massachusetts theory of capital stock paid in in cash or in property taken at the equivalent of cash; that no accumulations or surplus funds, from whatever source derived, were, for rate-making purposes, to be deemed to be capital; and, conversely, that if any of the gas companies to which the new theory was applicable had impaired their capital, that the impairment of that capital must be considered in the making of any rate, just as it was considered by the Railroad Commission in the West End case in 1897. Nor at that time would the directors of any gas company have assented to the proposition, if it had been asserted by the Commonwealth, that the new rate-making was

to be based upon the reproduction value of the property of any gas company, and not the original investment, if by reason of misfortune or excusable mismanagement that property had become of lessened value. Indeed, it is highly probable that, because of the drop in the price of pipe and other parts of the plants, many of the gas companies in the Commonwealth of Massachusetts in 1885 had property of substantially less value than the original investment. The owners of the stocks of those gas companies would have thought themselves hardly treated if the new regulating theory had taken as its basis, not their investment, but the then value of the property. They would have said, and justly said, that when they put into the public service their money in good faith, unless they ought to be penalized for mismanagement or grossly bad judgment, they were entitled to get that money back with a fair return thereon; and I venture to say that no sound-thinking man in this Commonwealth would have questioned the justice of that claim. No one ever did question the justice of this claim until speculators saw that these corporations had large surpluses accumulated, and then set up a new theory, as unsound and as unjust to investors as it is to consumers, as the basis of their claim for capitalizing surpluses.

Second.—Does the policy adopted in 1885 and enforced by this Board ground a claim that something other than the investment in the corporation should be the basis of the rate-making? Quite the contrary. As soon as this Board began to exercise its price-regulating power, the corporations urged upon the Board that they be permitted to charge prices for gas more than adequate to cover the reckoned operating expenses and to provide for reasonable current dividends, because of what they claimed were the risks of the business,—some of the greatest of those risks being (a) the destruction of their property by the competition of electric light, (b) the risk of explosion, (c) the risk of obsolescence. They asked for an insurance against these risks, for a depreciation fund to cover these and all other risks, many of which have proved to be largely imaginary. The argument that a price somewhat larger than was necessary to cover the operating expense and reasonable dividends, the surplus to go into a fund possibly to be used for depreciation and to cover risks, and, if not so used, to constitute a trust fund for the benefit of the consumers and thus to keep the capitalization low,—was a very taking argument, and it prevailed with this Board.

Again,—note that this public policy also was adopted not avowedly in the interest of the consumers, but at the request of the corporation managers. Whether this policy was or was not sound, the Board publicly adopted it, urged thereto by the gas corporations. It went into the reports of the Board as early as 1889; all your rate-regulation, from that time to this, has been upon the express basis that a reasonable dividend upon the *capital paid in* (the investment) should be the capital charge, and that surplus funds accumulated out of excess earnings were a trust fund, a return upon which was no part of the capital charge to be reckoned in a fair price for gas.

The following language from the Annual Report of 1889, p. 24, expressed this doctrine with absolute clearness:

> "The stockholders of a company are entitled only to fair and reasonable dividends on the actual amount of cash they have paid in. *The money used in the extension and improvement of the plant, paid out of surplus earnings, should not be capitalized, but should be used for* the benefit of consumers in reducing the price of gas."

"Here, twenty-two years ago, was the clear and definite statement made by this Board to the effect that surplus earnings "should *not be capitalized but should be used in reducing the price of gas.*" There could be no clearer declaration of the public policy of this Commonwealth. Apparently all of the gas companies of the Commonwealth joined in urging this doctrine upon the Commission. None, until within the last few years, have ever dissented from it; and then only when in the hands of speculators who were seeking to capitalize the surplus already too great.

Similar language, applying the same doctrine in various cases litigated, is found almost all through the reports. I cite, without quoting in extenso the language used, the following:

1890, the Amherst Gas case;

1894, the Springfield Gas case;

1894, the East Boston Gas case. In this case the Commission called attention to the fact that such surplus not only enabled a lower price to be given, but "gives strength to the corporation . . . and that *it should not be treated as the exclusive property of either*" corporation or the consumers.

See also the Report for 1894, the Roxbury, So. Boston & Dorchester cases.

1895, the Cambridge Gas case.

1895, the Haverhill Gas case. In this case the doctrine was pushed even beyond the limits originally laid down, and, as I think the Board now concedes, beyond reason. The Board then said: "The consumer for the time being of any well-managed quasi-public corporation gets advantages from the payment made to the company by the consumers of the past. The consumer of the future should therefore be regarded by the board of control, *and enough should be paid by the present consumers to provide for the natural growth of the community.*"

The mandate then issued to the effect that the consumers of Haverhill should love their children and provide capital for furnishing them with gas, has been fully complied with. The present difficulty is that the speculative interests now in control of the Haverhill Gas Company are seeking to divert this capital furnished by the ancestors of the present consumers, to their own benefit.

See, also, the Report for 1895, the Worcester Gas case.

1896, the Melrose Gas case.

1901, the Haverhill Gas case.

1901, the Special Lynn report.

1902, the Worcester Electric case.

1910, the Beverly case.

We have, then, a case where the public policy of this Commonwealth has permitted the creation of these surplus funds to secure the corporations and their stockholders against actual or hypothetical risks, with the distinct agreement and understanding that they were not to be capitalized, but were to be held in trust to meet the contingencies for which, in part at any rate, they were accumulated, and if not so used, for the benefit of the consumers.

The question presented by this and other cases today is, whether this Board is, of its own option, to reverse itself,—to transmute the exactions which it has permitted during a quarter of a century into extortions. Avowedly it has approved the levying of prices for gas higher than was necessary to pay the cost of manufacture and a reasonable return upon the capital furnished by the stockholders of the corporations. If, now, that excess in price is to be transmuted into capitalization, it amounts

to retroactive rack-renting of the gas consumers of the Commonwealth. It makes the policy of the Commonwealth a fraud ab initio.

Now I submit that, although this policy was, in the light of subsequent history, erroneous, it was entered upon by this Commission in entire good faith, urged thereto by the corporate interests of the Commonwealth; that these corporations and none of them can now be heard to say that that policy shall be made a fraudulent one; that this Commission would stultify itself, officially and personally, if it gave ear to such a proposition.

When the anti-confiscation powers of the Supreme Court of the United States are invoked, and the Court is called upon to deal with any question of local public policy or express or implied agreement between a state and its corporate creatures, it will deal with each situation as it finds it; if a value for franchises has been made by the state whose regulation is under attack, part of the property on which rates must be based, that Court will refuse to allow that property to be confiscated. By the same token,—if excess contributions have been made by consumers under an agrement that they shall be held for the benefit of consumers unless required for a depreciation fund, this Commission may safely assume that the Supreme Court of the United States will not make itself a party to a breach of an agreement or to working a fraud upon the gas-consuming public. Confiscation is really nothing but fraud; the Supreme Court will prohibit it. Extortion is another form of fraud; that Court will not assist it.

I conclude, therefore, that there is, and has for many years been, in the City of Haverhill a surplus fund, and that in it the gas consumers have an equitable right. I stand in my argument of this case on the doctrine laid down by the Commission in 1889 and ever since,—that this surplus cannot be capitalized, either directly or indirectly, and that therefore a rate must be made allowing no return upon the surplus accumulated out of the excess prices hitherto paid by gas consumers of this community.

Assuming then that you are to stand by the policy you have established and are to protect the trust funds you have caused to be created, what return to capital must now be reckoned in the price of gas in Haverhill? In answering this question consider three points:

(a) Any proper system of regulation penalizes mismanagement, of which extortion is the worst sort,—as it rewards efficiency and moderation in charges for the use of capital. This Company has paid 34% dividends for 13 years; no more dividends should be allowed out of current earnings until the aggregate of these 13 years of extortions pro-rate a fair return over the past and a dividendless future. They have "eaten their cake." You cannot treat them as you would a company that has paid only reasonable dividends during these 13 years. To reckon in the price for gas 10% on $75,000, the old and generously-reasonable dividend rate, is to say that corporation sin has no wage of penalty,—is to offer a reward for like extortions by other corporations, for that the worst that can happen to such corporations is to have a period of extortions ended by a return to the primrose paths of generous dividends.

(b) There is still in existence a depreciation fund too large; it should be reduced; this can only be done by putting the price so low as to permit no dividends out of current income.

Dividends to a reasonable amount, however, could legally be paid and charged to the surplus or depreciation account. If this policy resulted in a debt, that is no objection; such debt might in time be properly the basis of new capital. This goes on the assumption that no excessive dividends have in fact been paid,—contrary to the truth. But it relieves present consumers from any further present contributions for capital account; it permits them to have back in the form of reduced prices part of what has unjustly been extorted from them. It is just and legal that this should be done.

Obviously, under either of these theories, the price for some time to come cannot exceed 50 cents.

(c) But an argument—not sound—can be made to the effect that the extortions of the past are irremediable, that the present depreciation fund should be kept intact; that therefore the corporation should be put back on a generous dividend basis reckoned on its capital of $75,000. On this theory the price of gas would be not over 58 cents—60 cents would be excessive,—it would include a dividend of more than 10% to this much sinning corporation.

No one will now claim that excessive prices should continue to be charged in order that a further surplus may be built up to furnish new temptation for new speculators. This Commission

has in the last few years been plainly taught that the successful administration of a public-service utility requires that excessive profits are as great a danger as inadequate profits. Inadequate profits discourage new investment. Excessive profits invite into the public-utility field speculators, and drive out investors. What we want in this Commonwealth is that our public-utility securities should be absolutely safe and that the return thereon should be uniform; it should never be great, nor should it ever be small.

I am well aware that the proposition of 60-cent gas will cause hysterics, but you must face the facts. When I first argued for $1.00 gas, nearly 20 years ago, the suggestion was greeted with scorn and laughter. Yet everybody knows today that the Lynn Gas Company is making more money than it ought to make on 75-cent gas. Look at the quotations of the stocks of our gas companies. I cut the following from a recent issue of the Banker & Tradesman:

	Par.	Bid.	Asked.
Abington & Rockland Light & Power Co.	100	190	195
Cambridge Elec. Light Co.	100	295	300
Cambridge Gas Light Co.	100	270	275
Charlestown Gas & Elec. Co.	50	122	125
Edison El. Ill. Co., Brockton	100	199	202
Fall River Elec. Light Co.	100	197	200
Fall River Gas Works Co.	100	310	315
Fitchburg Gas & Elec. Lt. Co.	50	120	125
Lawrence Gas Co.	100	208	210
Lowell Elec. Light Corp.	100	210	215
Lowell Gas Light Co.	100	297	300
Lynn Gas & Elec. Co.	100	415	420
Mass. Lighting Companies	100	124	126
New Bedford Gas & Edison Light Co.	100	300	305
Pittsfield Electric Co.	100	190	200
Springfield Gas Light Co.	100	275	280
Worcester Elec. Light Co.	100	280	285
Worcester Gas Light Co.	100	290	295

You may safely assume that when the stocks of the corporations under your control reach a market value of two or more times the par value, regulation has failed adequately to protect the public rights. When Mr. Prichard's Lynn Gas Company sells gas for 75 cents and its stock is still selling for $415, it is high time for this Commission to make some radical rulings relative to the fair price of gas.

The Commission should not overlook that it is making rulings

not merely for the present, but for the future. Nothing could be blinder and more fatuous than the policy now urged by many who claim that they represent "capital and enterprise and stand for conservative theories." The simple test of both justice and expediency between the investor and consumer is this: What must the public pay for the use of capital in order to have the investor willing and anxious to continue to put it at the public service? Wise administration seeks merely to put consumer and investor on good trading terms. No one will go into a new enterprise for the public benefit, involving a risk, as most new enterprises do, unless, if success be reached, more than a mere interest or investment rate be allowed as a return upon the capital. Hazard must be paid for. It follows, of course, that the original capital invested in a public utility that succeeds is entitled to have substantially more than an interest or mere invesment rate, and that right continues to attach to the original capital invested. It does not attach to subsequent moneys put in for the extension of the enterprise after the day of hazard has passed and the corporation can consequently obtain all the money that it needs at ordinary investment rates.

Now, this Fourteenth Amendment theory of capitalization will throttle and destroy new enterprises and prevent the public from getting the benefit of new utilities. For illustration, we need in New England, as they already have in the West, heating plants, sending heat through pipes in the streets. Suppose that $1,000,000 be invested in this enterprise in this City of Haverhill with a public franchise in the streets of Haverhill, all the money being carefully invested in the plant itself so that in the beginning there is actually $1,000,000 of property offered for the public use. It begins to depreciate instantly. Pending the struggle to educate the public into the merits of the new enterprise, the investors lose year by year for five years $100,000 a year, until at the beginning of the sixth year there is only $500,000 of property invested in this public utility. Then the heat-users invoke the Fourteenth Amendment theory and a rate must be made on a capitalization of $500,000 only. The investors have lost irrevocably one-half of their $1,000,000. It is immaterial that the enterprise then begins to succeed and profits, without exorbitant rates, begin to be made. The rate is based upon the $500,000 of property. The heat-users owe no duty as to the half million of dollars lost.

Such a policy is unjust and inexpedient—both. As, between investors and heat-users, when the enterprise finally begins to achieve success, a rate should be made, not to give a return upon $500,000, but as nearly as may be upon $1,000,000, and the gradual accumulation of a fund to make up the $500,000 already lost, until the entire investment is restored, and a rate made so as to give a fair return upon the entire investment of $1,000,000. The community served by capital risked should, if the service proves to be a really valuable and successful one, return to the investor all the capital risked with a return thereon measured fairly in the light of the risks taken as one chief factor.

This Commission is, and for some years has been, under a tremendous pressure to abandon a sound and just policy making for new investments in new enterprises, making for the development of all kinds of public utilities as yet hardly dreamed of, in order to open the field for a conscienceless exploitation of surpluses, actual and alleged, of existing utilities, all the hazards for the development of which were long ago paid for, and which are now required but to be managed carefully and conservatively, although of course progressively. The policy urged upon this Board is a revolutionary one,—destructive of real enterprise; it would put a premium on speculation; it would discourage sound investment and prudent management.

THE REAL REPRODUCTION VALUE.

But, in view of the fact that the Commission felt bound to admit the evidence offered by the Company as to the reproduction value of its property, and also somewhat because of the fact that this community has been lobbied into a delusive belief as to the enormous value of the accumulation, I felt required to have a valuation made by a competent expert in whose fairness and judgment the Commission would have some confidence. Mr. Alton D. Adams is that expert, and as to him I desire to say a few words: This Commission recognizes the difficulty of getting on the public side of these questions any man who has had long experience in the building and management of gas companies. Nearly all gas engineers are tied up with the capitalistic interests; they cannot afford to take the consumer's side in these rate cases. It is fortunate for the public that there is a man of Mr. Adams's ability, training, experience and absolute integ-

rity,—a man from whom one cannot get an opinion with the slightest taint of dishonesty in it; a man for whom one's respect grows as one knows him more. I am glad to say this about Mr. Adams. In this case and on this question of reproductive cost, Mr. Adams, both in ability and in fairness, stands in striking contrast to the witnesses on the other side.

As to Mr. Royce,—though undoubtedly under some circumstances a competent engineer, it is enough to say that he is a party to the exploitation scheme; and that therefore his evidence given here is entitled to little weight. His original statement put in in the stock case for the purpose of getting $900,000 more of capital stock, and repeated in this case, is in essentials absurd. A few typical instances only:

He values the meters at $52,332, more than the cost, new, without any depreciation whatever, although meters are testified to have a life of only 25 years and many of the meters in use must be of that age. Services, $45,000, with no substantial depreciation. He had in his estimate of mains,—perhaps an inadvertence, as the others were not,—a large quantity of wrought iron as cast iron. The following table prepared by Mr. Adams shows the way Mr. Royce figures when fixing up a permanent load for the backs of Haverhill gas consumers.

Some values given by F. P. Royce on old Haverhill Gas Mains and on Springfield Mains.—See Springfield gas case, March, 1905, No. 438. Document 5.

Inch Main	Springfield Cts. per foot	Haverhill Cts. per foot	Ft. in Haverhill	Excess value Haverhill Rate
3	30	50	97,398	$19,479
4	40	60	80,519	16,103
6	60	80	75,529	15,105
8	80	100	756	151
10	100	125	18,328	4,582
12	150	175	1,534	283
16	200	250	3,247	1,623
				$57,326

Moreover, in the Springfield case Mr. Royce's cost for cast iron pipe was from $27.00 to $29.00 per ton; whereas it is now worth $22.00 per ton, i. e., in the Springfield case iron was worth about 25% more. Allowing for this difference in the cost of iron it will be observed that Mr. Royce's Haverhill figures are in many instances nearly double his Springfield figures.

Mr. Royce's valuation is entitled to no serious discussion.

As to gas experts Chase and Jackson, it is impossible to speak without laughter. Mr. Chase is undoubtedly a good book-keeper. He holds himself forth as a "certified accountant;" and a certified accountant, as nearly as one can make out, is one who claims to be an expert on everything, from running the United States to managing a Dipsomaniac Hospital. We had to wait for him a while, as he was in Washington helping President Taft manage the United States. He undertook to qualify himself as a gas expert. He said in the early part of his testimony that he was a gas expert. After he had been cross-examined a little while, he concluded (and said) that he ceased to be a gas expert 20 years ago.

Professor Dugald C. Jackson is Professor of Electrical Engineering in the Institute of Technology. I have no reason to doubt he is a good professor of Electrical Engineering. He said he had never testified as an expert in a gas case before; and I suggest that, out of regard for his own reputation and that of the Institution of which he is a member, he should never so testify again. We had to wait for him a while as he was in London advising the British Government in its weightier matters. He seemed to have an impression that by giving a list of the learned societies with which he is connected and making his direct testimony reek with statements of the "care" that he had exercised,—even stating that he had gone around the streets to verify the Company's maps of mains,—the cross-examination would be formal only, and that his ipse-dixit would be taken as the last word by this Commission. Before I had finished with him on cross-examination, I found that he knew next to nothing about gas matters; that he had taken the heavier weights of water pipe instead of the weights of gas pipes for all the underground mains; that he figured his reproduction cost on the mains, not upon the present values, but upon an alleged average of 27 years,—some $5.00 a ton higher than the present price; that he testified to taking the *average* price because, as he put it, it would be "unfair" to take the present prices, they being lower; that he indicated his fairness as between investor and public by asserting in the same breath that he took the present values of land, although much higher than the cost values. It is no wonder that the Highway Commission is in trouble, when it has as an adviser an alleged expert who, in dealing between public utility and user, takes the cost when the cost is higher, and the

value when the value is more than the cost,—so that the consumer must lose, and cannot profit, out of the reproduction-value theory.

I eliminate from serious discussion gas experts Chase and Jackson. A prettier pair of parroting poseurs were never presented for the purpose of promoting or protecting the perpetration of any predatory project.

It is no wonder that Mr. Tyler in effect abandoned these two witnesses in his final argument yesterday, and put the stress of his claims on what Mr. Prichard of the Lynn Gas Company said.

What shall be said as to Mr. Prichard's evidence in the case? Of course, Mr. Prichard is a very competent gas engineer. I cross-examined him in the Salem case some years ago; and I know of his adroitness in being on both sides of the same proposition—of minimizing depreciation charges when assisting the Holyoke Gas Company to get a high price for its plant; and magnifying depreciation when helping the Salem Company get a high price for gas. He is as unfair as he is competent.

The circumstances of his appearance in this case make his testimony of no weight. Repeatedly during the summer, Mr. Tyler, when I was urging the completion of the case, said he had no other witnesses except Mr. Robb, and got delays on his assurance that his case was substantially completed. The Company, not the City, raised the issue of reproductive value on its Fourteenth Amendment theory. To meet that claim on the facts we put on Mr. Adams in rebuttal. We know no sur-rebuttal in Massachusetts trials. The Gas Company was bound to put in all its evidence on value before it rested its case. Yet, in the face of both express agreement and waiver of right by resting his case before Mr. Adams gave his evidence on valuation, it was sought to put in Mr. Prichard's views of value to affect the weight of Mr. Adams' irrefutable figures and opinions,—and thus to get "both ends and the middle" of the trial. A fair sample of the "fairness" of this Gas Company's dealings! When the Commission made its astounding and unprecedented ruling admitting Mr. Prichard's evidence, I refused (and properly) to cross-examine,—to drag this case over many more weeks of trial. The result was that Mr. Prichard gave a garbled and inaccurate statement of some parts of Mr. Adams' evidence, demolished some men of straw; and that farce ended. This Commission

knows that if Mr. Prichard were faced on cross-examination, as he would have been if he had been produced in order, by his evidence in the Holyoke case, he could not have increased Mr. Adams' careful and conscientious estimate of the reproductive value of this plant.

There is no evidence in this case comparable in weight with that of Mr. Adams. It will be worth all that this trial has cost the people of Haverhill to have at last on the record the competent and careful testimony of this capable and conscientious man as to the real value of this gas plant for gas-making purposes. When next they deal with the question of municipal ownership they will have some reliable guide as to the probable amount they will have to pay for the property they have already in large part paid for.

Moreover, every member of this Commission is a real gas expert. We join with the Company in requesting that the Commission make a finding as to the fair value of the property used and necessary to be used for gas-making purposes. Not that such finding is necessary to a proper decision; but to show any Court into which this Company dare take either the stock-watering case or the rate case, how extensive and groundless is the scheme of extortion now being promoted. "Let there be light!" Set forth the real facts.

What is the full and fair reproductive value of the property of this Company—for gas-making purposes, not for some other purposes—and including only property used and necessary to be used for gas-making purposes? The test is, what would willing purchasers having like franchises and rights in the streets pay for this plant rather than build another one—on the same site or on another site? It matters not what it would cost to reduplicate the particular parts of this plant; no unbiased and unforced purchaser would pay the cost of putting two 3 or 4-inch pipes in the same street when one 6 or 8-inch pipe is needed. Nor is the site to be taken at its value for other purposes; for gas-making it is worth no more than land equally available for a gas plant can be bought for.

Mr. Royce admits, though unwillingly, that this is the true method; but neither he nor any other witness for the Company followed it. See p. 424, where he says, in reply to a question "as to whether an old company can under any circumstances be entitled . . . . . to receive a return upon a larger valuation

than a new company could furnish equivalent facilities for,"—"No, I don't think they could."

Mr. Adams states his results in two parts, first valuing all the existing property used and necessary to be used, at its value for gas-making purposes, and on the assumption that it is subject to no depreciation because of non-adaptation to the needs of this gas-using community, i. e., that a new company would build exactly this sort of plant; that therefore every part has full cost value except as lessened by age and use. On this basis his summary is as follows:

SUMMARY.

Value of the Plant of the Haverhill Gas Light Company as of June 30, 1911. By Alton D. Adams.

Plant Items.	Totals.
Land	$11,488
Buildings	58,176
Holders	105,585
Tanks	6,204
Boiler Plant	5,267
Machine Tools	642
Gas Machinery	51,524
Works Pipes	12,290
Mains and Services	151,809
Meters	31,713
Furniture, Horses and Wagons	3,737
	$438,435
6 per cent for Engineering, Interest, etc	26,306
	$464,741
Deduct amount for excess capacity	36,172
	$428,569
Add for Working Capital	20,000
	$448,569

This summary of values is based upon the theory that all property referred to therein is used and necessary to be used for the gas business; that is, no depreciation has been allowed by reason of inadaptation of any part of this property to the actual and prospective needs of a company making and distributing gas in Haverhill. It therefore greatly exceeds the value which a willing purchaser, having an exclusive right to do the gas busi-

ness in Haverhill, would pay for this property rather than build a substitute plant.

Mr. Adams testified that, testing the value of this property by what the willing purchaser, having his option either to buy or to build a substitute plant, would be justified in paying, i. e., what he would advise a capitalist coming new into Haverhill to pay for this plant rather than to build a new plant in a new location, he would have to discount $100,000 from the values above stated, making the total value of the plant, used and necessary to be used for gas-making purposes, not exceeding $350,000.

A few of the main reasons for this substantial discount are, that the removal of the plant from the Winter Street site is inevitable within a few years,—long before the buildings and the machinery there located will wear out. The location of the holders is not a good one. Moreover, the manufacturing plant is now some distance from the holders; in cold weather there is waste in running two steam plants. This inevitable removal will cause tremendous loss not only on the buildings, but also in the mains around the works, necessitating a readaptation of a considerable part of the distribution system. It is common knowledge in Haverhill that this removal has been under discussion for very many years, probably for 15 years; and, indeed, Mr. Royce admits that his concern carefully considered removing before they re-habilitated the plant in the old location, and expects that before very many years they will have to move. In spite of this, however, they have put an excessively large water-gas plant on this little, narrow strip by the railroad, thus putting the Haverhill Company entirely at the mercy of the makers of the price of oil, instead of putting in a mixed coal-and-water-gas plant, as the best engineers are now doing in cities the size of Haverhill. A pure water-gas plant is not worth, in proportion to its cost, as much as a mixed coal-and-water-gas plant. In this connection I may say that I find myself forced to the conclusion that a substantial part of the recent expenditures made have been made, not from the engineering standpoint, but from the stock-watering standpoint.

Moreover, the distribution system in Haverhill is bad. It has a larger percentage of small mains than almost any other city whose figures are available. In many streets there are two small mains where there ought to be one large one; of course leakage and repairs are much larger. The distribution system of Haver-

hill cannot be figured upon the value of the iron laid, less depreciation by reason of age; a large deduction must be made by reason of inadequacy and ill-adaptation to the needs of the community. Mr. Adams makes a deduction of 20% from his figure of $151,000 for the mains, and a still larger deduction on the buildings, works, pipes and gas machinery.

The plain truth is that this plant is a badly located, poorly-adapted water-gas plant, that it has been badly engineered for at least a dozen years. The more one examines into the details, the more mythical and groundless do the claims of large values made in recent years become.

My own view, if I may venture to express it, is that Mr. Adams's figures are still too high. It seems to me that if you test the value of this property as you would test, for instance, the value of a cotton mill where no public franchise was involved, having always in mind that the test is whether the old should be bought or a new substitute should be constructed,—that the value put by Mr. Adams on this old plant would not be paid by any purchaser having a free choice.

Note also as to the summary, that it puts the value of the land, not at what the actual site on Winter Street may be worth for a shoe factory or for some other purpose, but the maximum price at which another company coming to Haverhill could obtain a site adapted to gas purposes. Really Mr. Adams figured at 15 cents a foot for an adequate area; but the evidence showed that there were several perfectly available sites which probably could be obtained for one-third of that figure. He does not include in this valuation of property, used and necessary to be used for gas-making purposes, certain items of property that the present company actually owns but does not use, nor need to use, for gas-making purposes. These items of property, of course, are additional assets belonging to the Company, which the Company can sell or dispose of as they please; but which are not, properly speaking, a part of the gas-making plant. The chief items of this rejected property are—Essex Street land, $15,000; Merrimas Street land, $25,000; supplies and merchandise, $29,613,—mostly stuff on hand for the reconstruction of the plant; sundry other small items amounting to $12,463,—making a total of $82,076. Of course, if the Company needs to use, and should use, one of these lots of land for an office building, it might then be properly a part of the gas plant and treated as such for all

purposes. In fact it does not so use this land, nor, on the evidence before this Commission, would any new company think of buying either of these business blocks as a part of a gas plant.

But Stone & Webster say that they paid over $600,000 for this property, and the Commission admitted this evidence as having some tendency to show what the property might be worth. No court would ever have admitted it. It was not a sale within the meaning of the sensible rule that sales in the open market are competent to show values.

But, passing this weighty objection, it does not even appear that Stone & Webster had any valuation of the property made by engineers before they made the purchase. Mr. Robb's testimony seems, indeed, to show that they did not rely at all upon an engineer's estimate in making the purchase. Nor does it appear that there was not some ulterior purpose,—financial dealings perhaps connected with the settlement of the bankrupt estate of E. H. Gay & Co. (like the Hudson River Power Company) inducing them to make this purchase. But another and perhaps more important motive, which may explain the payment of this extraordinary price, is the fact that the City of Haverhill had started to take this plant for a municipal plant. Now, if there is anything that a concern like Stone & Webster, who are now engaged in exploiting at tremendous profit to themselves public-utility plants all over the country, do not want, it is municipal ownership. To stop a movement of that kind in Massachusetts cities may well be worth several hundreds of thousands of dollars to them. Moreover, their whole attitude in this case, particularly again Mr. Robb's testimony, shows that what they really paid for was not plant, but franchise. They were ready to pay a big price because of their belief, unfortunately too well-grounded in historical fact, that under the regulation hitherto administered in this Commonwealth, gas consumers could and would be compelled to pay prices which would give a return on far more than the fair re-productive value of the property used and necessary to be used. This Commission can have no doubt that $600,000 was from two to three times the fair re-productive value of this plant, when Stone & Webster bought—not really the plant at all—but the stocks and bonds of the Haverhill Gas Securities Company.

It would be a strange proceeding if this Commission should allow its judgment as to the value of gas properties to be influ-

enced by the price paid for a control of gas property, based in large part upon the Commission's failure hitherto to make effective reasonable and just prices for gas.

IV.

REGULATED MONOPOLY AND MUNICIPAL OWNERSHIP.

Legalized monopoly under the regulation of this Commission is really in competition with municipal ownership. Bad as our municipal ownership law is—and I may note in passing that the law was drawn, not for the purpose of facilitating, but of preventing municipal ownership,—this Commission cannot expect to command in the long run general public support unless, fairly compared, the results of legalized monopoly under its regulating control, are as good service at as low rates as may be reasonably expected under municipal ownership.

Just what the gas consumers of Haverhill would have had under municipal ownership is, of course to some degree, speculative,—but not too speculative to make interesting and pertinent a comparison between what they have had and what they might have had if they had taken this plant over in 1886, when Massachusetts created this regulating Commission. The comparison, in brief, is as follows:

The amounts paid by the Haverhill Gas Company to or for the benefit of its owners are as follows:

1886-1896,	dividends	10% per annum, 11 years...	$82,500.00
1897,	"	14%	9,750.00
1898,	"	50%	37,500.00
1899,	"	20%	15,000.00
1900,	"	30%	22,500.00
1901-1910	Payments to Haverhill Gas Securities Co.		249,373.86
Making a total of.....			$416,623.86

This is an average dividend for 25 years of about 22 1-5%.

But this is not all the sums that these gas consumers have been compelled to pay in their gas prices, on capital account. (And note in this connection that, on any theory of the surplus fund, it cannot be repaid in cash to gas consumers; the most that can be claimed for it is that in equity it is to be held for the benefit

of both consumers and stockholders, or so applied as to give greatly reduced prices.) The consumers have also contributed to a depreciation or surplus fund. In 1887 the total assets of the Company, according to its books, were $91,878.07. In 1910, the total book assets, deducting the worthless claim against the Haverhill Gas Securities Company, not an asset at all, were $764,871.99, or $672,993.92 more than they were 24 years ago. The Company, therefore, claims that in these 24 years it has increased its assets out of net earnings about $28,000 a year. But, as already shown, this result is reached by the process of padding for the purpose of stock-watering; the actual increase is nothing like $28,000 a year. A fair estimate of the increase of the property out of excess earnings during these 25 years is $10,000 a year,—amounting to $250,000 in the 25 years. As the Reports of this Board do not show a return of the assets of the company until 1887, the increase figure is really for 24 years and not for 25—a slight error in favor of the Company—but practically immaterial. This estimate of $250,000 increase is substantially less than the increase shown by the assessors' valuation in the City of Haverhill, for during the same period they have increased the assessed valuation from $122,500 to $439,525, an increase of $317,025.

Another method of testing this estimate is by taking the aggregate of the balances of the Gas Manufacturing Account for 24 years, which is $902,923.17, and deducting the amounts paid in direct and indirect dividends as above set forth for the same period of 24 years, which is $416,623.86, which leaves something over $486,000 as money apparently earned and not paid out to stockholders. If we allow something over one-half of this for repairs and depreciation not already charged up in operating expenses, we must be up to the facts, even taking into account the fact that this manufacturing plant has been junked twice; and that it has had (what Stone & Webster say by their acts), bad engineering in putting in the plant they have taken out, and what Mr. Adams says is bad engineering in putting in the plant that they have just put in.

Taking this $10,000 a year as the consumers' excess contribution, and adding this to the dividends actually paid, we have a total contribution to capital made by these gas consumers of $666,623.86 for the whole period, or $26,664.95 a year for these 25 years, an average of 35.5% on the $75,000 of capital.

Assuming, on the other side, that the City of Haverhill had taken this gas plant in 1886 or 1887, when its book value was a little over $90,000, and its value assessed for taxes was $122,-500,—what would the City have had to pay for the plant? Its book values would have been evidence against it. Assessed value for taxation purposes gives us a basis for fair inference. One hundred and fifty thousand dollars, or twice its capitalization, is, in my judgment a high price to estimate that the City would have had to pay for this property in 1886. I do not concede that the plant was worth $150,000 in 1886, or that the City ought to have been required to pay substantially more than one-half of that sum. But I am assuming that, as usual in Massachusetts, Haverhill would have had to pay a large premium for its freedom from the gas tax gatherer. I have resolved all doubts on both sides of the account, in selecting figures, against municipal ownership. The City could clearly have borrowed this money at 5%, which would have made an annual carrying cost of $7,500, which in 25 years amounts to $187,500.

Actual payments under private ownership to capital ($75,000) during the 25 years.....	$666,623.86
Estimated payments under municipal ownership for the same period.....	187,500.00
An advantage from municipal ownership of..... for 25 years,—an average of $19,164.95 a year.	$479,123.86
Municipal ownership costs per annum.....	$7,500.00
Private ownership costs per annum..... or more than 3½ times as much.	26,664.95

Nor can anything be conceded to the common claim of superior efficiency of management under private ownership. During the years 1886 to 1898 inclusive the management was probably good; I remember getting a good impression of the competency and faithfulness of Mr. Stratton, the old Superintendent. But since the speculators got control in 1899, the management has been far more inefficient than even a very badly managed municipal department.

If the City of Haverhill as a municipality could have had the benefit of the taxation (for it is such) levied upon its citizens by its Gas Company, it would have gone far to defray the ex-

penses of the school houses necessary in this thriving and intelligent community.

These results of legalized monopoly are typical except as to degree. We must have municipal ownership: our "regulation" has given us piracy.

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